LEE KOK WAI & ANOR v. SECURITIES COMMISSION MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
ASMABI MOHAMAD J
[JUDICIAL REVIEW NO: R2-25-219-12-2014]
4 MARCH 2015

ADMINISTRATIVE LAW: *Judicial review – Application for – Application for leave to quash issuance of notice to show cause under s. 31Z of Securities Commission Act 1993 – Whether issues ventilated in earlier similar applications – Whether application res judicata – Whether there was 'decision' amenable for review – Whether application premature – Whether relief sought had become academic – Whether application an abuse of process of court – Rules of Court 2012, O. 53 rr. 2(4) & 3*

The applicants' application for leave under O. 53 r. 3 of the Rules of Court 2012 ('ROC') was to quash the decision of the Audit Oversight Board ('AOB') of the Securities Commission Malaysia ('SC') in issuing a notice to show cause pursuant to s. 31Z of the Securities Commission Act 1993 ('the Act'). The inquiry was to investigate a suspected non-compliance of certain recognised auditing and ethical standards pertaining to an audit on a company. The respondent submitted that: (i) the judicial review application was *res judicata* as the issues to be decided were similar to the earlier applications ('the first and second applications') by the same applicants and which were dismissed by the High Court and affirmed by the Court of Appeal; (ii) the application was academic; (iii) the application was premature as there was no reviewable decision; and (iv) a judicial review application could not stay proceedings of an investigative body exercising regulatory function entrusted by the law. The applicants submitted that the notice to show cause was issued under s. 31Z of the Act and constituted a 'decision'. The issue for determination was whether the notice to show cause was reviewable under O. 53 r. 3 of the ROC.

Held (dismissing application):

(1) Not all decisions and actions of the public officer are reviewable by the court. In dealing with the application for judicial review involving the investigative process and/or deliberations, which formed part and parcel of the regulatory functions of the agency, the courts would be reluctant and/or slow to grant the relief in the form of judicial review. This is because the court would be reluctant to open the floodgate and expose the statutory bodies to constant judicial review as to do so would impede the bodies from exercising their regulatory functions effectively. The AOB should not be hindered from proceeding with the investigation or deliberations process, which the AOB is entrusted by the law to perform. Therefore, the AOB must be given the leeway to perform the tasks entrusted by the law without any interference. (para 21)

(2) The AOB had conducted inquiries and issued notices to show cause as part and parcel of the whole investigative process. The investigative process was still in progress at the time the notice to show cause pursuant to s. 31Z(5) of the Act was issued. Hence, the notice to show cause did not qualify as a 'decision' within the context of O. 53 r. 2(4) of the ROC as the notice did not constitute a conclusive determination of the applicants' rights or obligations and/or deprived the applicants of the benefits they were entitled under the Act. In the absence of a final determination by the AOB, the applicants could not be said to be adversely affected by the notice to show cause. (para 21)

(3) The reliefs sought by the applicants in the first, second and current applications were almost similar. All three applications concerned attempts by the applicants to quash the acts undertaken by the AOB as part and parcel of its investigative process. There were no ultimate decisions made affecting the applicants' rights at these stages. The High Court which decided the first and second applications had ruled that a stay of the proceedings could not be applied to stay an internal decision making process of the AOB of the SC and the decisions were affirmed by the Court of Appeal. In not pursuing their appeal further, except in respect of part of the decision of the second application, the applicant had conceded that the decision was correct. Hence, in pursuing the current application there was clearly an abuse of the process of the court. (para 22)

(4) As had been decided in the first and second applications, the present application was also academic. By the time the issues were ventilated, there was nothing to be reviewed. The first applicant had submitted his explanation in response to the notice to show cause and therefore, the application would fall on the ground that the relief sought had become academic. (para 23)

(5) In order to invoke the court's judicial review powers, there must be a subject matter for the court to review; a decision made by the decision maker or refusal by him to make a decision. In the circumstance where there was no decision made by the AOB, the applicants' action to move the court for leave for judicial review to be issued was premature. (para 24)

(6) The applicants' attempt to restrain the AOB from exercising its statutory duties and regulatory functions tantamount to an abuse of the process of the court. The applicants were abusing the process of the court in attempting to delay advancement of the inquiry and any subsequent deliberations or decisions to be made by the SC. (para 25)

Case(s) referred to:

Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor [2008] 6 CLJ 805 CA ***(refd)***

Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals [2012] 1 CLJ 805 FC ***(refd)***

Ahmad Azam Mohamad Salleh & Ors v. Jabatan Pembangunan Koperasi Malaysia [2004] 4 MLJ 86 ***(refd)***

Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(refd)***

Cheah Foong Chiew v. Lembaga Jurutera Malaysia [1999] 3 CLJ 242 CA ***(refd)***

City Growth Sdn Bhd & Anor v. The Government of Malaysia [2005] 7 CLJ 422 HC ***(refd)***

Datuk Ishak Ismail v. Securities Commission [2011] 8 CLJ 208 HC ***(refd)***

Deeb v. IIROC, 2012 ONSC 1014 ***(refd)***

QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor [2006] 2 CLJ 532 CA ***(refd)***

R v. Secretary of State for Home Department, ex parte Rushkanda Begum [1990] Crown Office Digest 109, Dip ***(refd)***

R v. Sloan [1990] 1 NZLR 474 ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 53 rr. 2(4), 3

Securities Commission Act 1993, ss. 31W, Z(2), (5)

For the applicant - Vernon Jude Samuel; M/s Shu-Tai

For the respondent - Lee Shih (Natalie Ker with him); M/s Skrine
- Mazlifah Ayob; AG's Chambers

Reported by S Barathi

JUDGMENT

Asmabi Mohamad J:

Introduction

[1] This was the applicants' application for leave under O. 53 r. 3 of the Rules of Court 2012 ("RoC") to quash the decision of the Securities Commission Malaysia ("SC") in issuing the notice to show cause dated 5 September 2014 pursuant to s. 31Z of the Securities Commission Act 1993 ("Act 498").

[2] This was the third attempt by the applicants to apply for leave for judicial review after their unsuccessful attempts to quash the SC's decisions *vide* Case No: 25-10-01/2014 filed on 30 January 2014 and Case No. 25-68-03/2014 filed on 20 March 2014 respectively.

[3] In Case No. 25-10-01/2014, the second applicant applied for judicial review to quash the SC's issuance of notification to the first applicant fixing a meeting before the Audit Oversight Board of the SC ("AOB") on 5 February 2014 ("first application").

[4] The first application was heard by Her Ladyship Justice Zaleha Yusof on 6 February 2014 and the same was dismissed on 18 February 2014 as the application was filed by the wrong party, the second applicant herein, when the notification was issued to the first applicant, one Lee Kok Wai. It was also held that the application had since become academic since the AOB meeting of 5 February 2014 did not take place. Another reason for its dismissal was that it was prematurely filed. The applicant, Crowe Horwath filed an appeal against the said decision to the Court of Appeal and the same was dismissed on 26 August 2014. The applicants did not pursue the matter further.

[5] In Case No. 25-68-03/2014 the applicants filed for judicial review to quash the SC's issuance of a notification to Lee Kok Wai to fix a meeting before AOB on 21 March 2014. The applicants had also applied for a stay of all AOB proceedings, including a stay of any notification/publication of any decision of the AOB ("second application"). On 21 March 2014, Lee Kok Wai appeared before the AOB for the meeting and the meeting proceeded.

[6] The second application was dismissed by the High Court on 7 April 2014. The High Court, amongst others, held that the second application ought to be dismissed due to *res judicata* arising from the earlier dismissal of the first application. The High Court had also held that even if the said court was wrong in its decision the same ought to be dismissed as the matter had since become academic and was prematurely filed. Further, there was no decision amenable for review.

[7] It was also held that the stay proceedings could not apply to the investigative process of the SC. Aggrieved by the said decision the applicants had filed an appeal to the Court of Appeal and the said appeal was dismissed on 26 August 2014. Dissatisfied with the said decision, the applicants had filed for leave to appeal to the Federal Court *vide* notice of motion No. 08-482-09/2014 with respect to part of the decision, which had upheld the decision of the High Court in dismissing the application of the applicants to restrain the SC from notifying/publishing or enforcing any decision it might make in the inquiry, pending the final determination of the Suit No. 22NCC-1219-08/2012. The hearing before the Federal Court had been fixed to 29 January 2015.

[8] Upon perusal of the cause papers and the written submissions filed herein by the respective parties and upon hearing learned Senior Federal Counsel for the AGC, learned counsel for the SC, the putative respondent and the applicants, I dismissed the applicants' application for judicial review and ordered costs of RM2,000 to be paid to the AGC.

Parties

[9] The parties cited in this application are as follows:

(i) The first applicant is an accountant and a partner of the second applicant. The second applicant is a firm of public accountants and was the external audit firm for Silver Bird Group Bhd, a public listed company under the main Market of Bursa Malaysia; and

(ii) The SC is a statutory body established under Act 498, which body is responsible for regulating and developing the capital markets in Malaysia. The AOB is established under Act 498 and amongst its main objectives are to promote confidence in the quality and reliability of audited financial statements in Malaysia and to regulate the auditors of public-interest entities such as public listed companies, licensed banking institutions and licensed insurance companies.

Background Facts

[10] The AOB of the SC had commenced an inquiry pursuant to s. 31W of Act 498 against an accountant, one Lee Kok Wai. The purpose of the inquiry was to investigate a suspected non-compliance of certain recognised auditing and ethical standards pertaining to an audit on a company known as Silver Bird Group Bhd.

[11] The chronology of events which are relevant for the purpose of this application can be stated as follows:

(i) On 8 February 2013 the AOB had issued a notification of inquiry to Lee Kok Wai pursuant to s. 31W of Act 498;

(ii) On 10 January 2014 the AOB issued a notice to attend the inquiry meeting scheduled on 5 February 2014 ("notice 1"). However, this meeting was cancelled;

(iii) On 14 March 2014 the AOB issued another notice rescheduling the inquiry meeting to 21 March 2014 ("notice 2"). The meeting proceeded as scheduled on 21 March 2014;

(iv) On 5 September 2014 the AOB issued a notice of show cause pursuant to s. 31Z of Act 498; and

(v) On 3 October 2014 Lee Kok Wai submitted his written explanation to the SC as required by the notice to show cause pursuant to s. 31Z of Act 498.

[12] The application before me was to quash the decision of the AOB in issuing a notice of show cause pursuant to s. 31Z of Act 498 whereby the AOB had commenced an inquiry pursuant to s. 31W of Act 498 against one Lee Kok Wai. This inquiry was to investigate a suspected non-compliance of certain recognised auditing and ethical standards pertaining to art audit on a company known as Silver Bird Group Berhad.

[13] The applicants' application *vide* encl. 1 was dismissed by me on 15 January 2015.

Issues Raised By The Attorney General's Chambers, The Putative Respondent And The Applicant

By The Attorney General's Chambers

[14] The Senior Federal Counsel who represented the AGC objected to the leave application, had amongst others, raised the following submissions:

(i) There was no arguable case and the application before this court was frivolous, vexatious and an abuse of the process of court due to the following grounds:

(a) The notice of show cause was not a "decision" within the context of O. 53 r. 2(4) of RoC. Therefore the notice of show cause was not amenable to judicial review; and

(b) The application was premature.

The Putative Respondent

[15] The learned counsel for the SC, the putative respondent who had been served with the necessary cause papers of the application for judicial review, both sealed and unsealed copies, was permitted by this court to submit only legal arguments, pertaining to the leave application, amongst others, raised the following arguments:

(i) The judicial review application was *res judicata* as the issues to be decided were similar to the first and second applications made by the same applicants which were dismissed by this court and affirmed by the Court of Appeal;

(ii) The judicial review application was academic as it sought to quash the decision of the SC to issue a notice to show cause dated 5 September 2014 which required the first applicant to furnish a written explanation to the AOB as to why the AOB should not take action against the first applicant pursuant to s. 31Z of Act 498 when in fact the first applicant had submitted his written explanation to the AOB sanctioned by the said notice;

(iii) The application was premature as there was no "reviewable decision". The issuance of the notice to show cause was part of the SC's inquiry process and the applicants ought to wait until the SC issued the decision and/or the outcome of the inquiry before commencing this application; and

(iv) A judicial review application could not stay proceedings of an investigative body exercising regulatory function entrusted by the law.

The Applicants

[16] On behalf of the applicants the following issues were canvassed:

(i) This was only a leave application and not a substantive hearing of judicial review application. The applicants only needed to show that they have a *prima facie* case. All the applicants needed to show was that their application was not frivolous; and

(ii) The notice to show cause was issued under s. 31Z of Act 498 and constituted a "decision". Section 31Z of Act 498 was applicable only after a decision was made that the auditor concerned was in breach. Subsection 5 provides that the penalty under sub-s. 2 shall not be imposed until after the auditor concerned is heard. The notice to show cause was therefore issued after a decision was made. The decision that the applicants were guilty had already been made. A perusal of the notice to show cause issued by the SC clearly indicated that the decisions had been made and what was left to be done was for the applicants to put forth their mitigation in terms of the penalty.

The Law

Threshold At Leave Stage

[17] It is settled law, the function of the court in exercising its power to grant leave for judicial review is to sieve through the application before it and determine the following:

(i) That the application is not frivolous and vexatious; and

(ii) There is an arguable case to merit further argument on the substantive motion.

(see *Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals* [2012] 1 CLJ 805; [2011] MLJU 698).

[18] In *R v. Secretary of State for Home Department, ex parte Rushkanda Begum* [1990] COD 107 at p. 109, the Court of Appeal in England had laid down the following guidelines in respect of an application for leave for judicial review:

(i) If it is clear to the judge that there is a point for further investigation on a full *inter partes* basis with all evidence as is reasonably necessary on the facts and all such arguments on the law then leave ought to be granted;

(ii) If the judge hearing the leave application is satisfied that there is no arguable case the judge should dismiss the application for leave to move for leave for judicial review; and

(iii) If the judge is not really sure whether there is or is not an arguable case, the judge may invite the putative respondent to attend and submit as to whether or not leave ought to be granted; and

(iv) In exercising the powers in an *inter partes* leave application the test applicable by the court must be the same approach as the test adopted in deciding whether to grant leave to appeal against the arbitrator's award. The court has to consider the facts and law before it and ask itself whether the court is satisfied that there is a case fit for further consideration or otherwise.

The Issue

[19] There was only one issue which called for determination:

> Whether the Notice to Show Cause dated 5th September 2014 issued by the putative respondent to the applicants is reviewable under Order 53 Rule 3 of the RoC.

Decisions Of The Court

[20] Upon perusal of the cause papers and upon hearing the submissions of the respective parties including the putative respondent the following are my decisions.

No "Decision" Reviewable Under O. 53 R. 3 of RoC

[21] The applicants had failed to satisfy the provision of O. 53 r. 2(4) of the RoC:

(i) The notice to show cause issued by AOB on 5 September 2014 was, made pursuant to s. 31Z of Act 498. Section 31Z(2) provides as follows:

> (2) Where a person has committed a breach under subsection (1), the Audit Oversight Board may take one or more of the following actions:
>
> (a) direct the person concerned to comply with the provisions of this Part or any conditions imposed under subsection 310(4), or any written notice or guidelines issued by the Commission;
>
> (b) reprimand the person concerned;
>
> (c) require the person concerned to take such steps, as the Audit Oversight Board may direct, to remedy the breach;
>
> (d) require relevant professional education to be undertaken by the person concerned;
>
> (e) assign a reviewer to oversee an audit that is undertaken by the person concerned;
>
> (f) prohibit the person concerned from accepting any public interest entity as its client for a period not exceeding twelve months;

(g) prohibit the person concerned from auditing financial statements of a public interest entity for a period not exceeding twelve months or permanently; and

(h) impose a penalty not exceeding five hundred thousand ringgit on the person concerned.

(ii) Section 31Z(5) of Act 498 states that before the AOB takes any action under s. 31Z(2) of Act 498 it shall give the person concerned an opportunity to be heard;

(iii) Upon perusal of the relevant provisions of Act 498 it would appear that the AOB is entrusted under the law to conduct an inquiry in order to ascertain if any person under its supervision had contravened or failed to comply and/or observe the provisions of Part 111A - Audit Oversight Board or the conditions imposed under sub-s. 310(4) or any written notice or guidelines imposed or issued by the SC;

(iv) In the case at hand, the AOB had conducted inquiries and issued notices to show cause as part and parcel of the whole investigative process. It had not made any "decision" and/or imposed any sanctions yet. The investigative process was still in progress at the time the notice to issue show cause pursuant to s. 31Z(5) of Act 498 was issued. As such there was no "decision" made by the AOB as the whole investigative process was still in progress and had not been completed. It is only when the AOB makes its decision under s. 31Z(2) of Act 498 after considering the explanation given by the applicants pursuant to s. 31Z(5) of Act 498 could the AOB be said to have completed its task under the Act 498. It is only at this point the applicants could file the application for leave to review the decision made by the AOB;

(v) The decisions of the courts in cases such as *City Growth Sdn Bhd & Anor v. The Government of Malaysia* [2005] 7 CLJ 422; [2006] 1 MLJ 581; *R v. Sloan* [1990] 1 NZLR 474; *Datuk Ishak Ismail v. Securities Commission* [2011] 8 CLJ 208; *Deeb v. IIROC* 2012 ONSC 1014; *QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor* [2006] 2 CLJ 532; *Ahmad Azam Mohamad Salleh & Ors v. Jabatan Pembangunan Koperasi Malaysia* [2004] 4 MLJ 86; *Cheah Foong Chiew v. Lembaga Jurutera Malaysia* [1999] 3 CLJ 242; [1999] 3 MLJ 110 had thrown some lights on how the courts should approach the subject matter. It had been illustrated by the above cited cases that not all decisions and actions of the public officer are reviewable by the court. In dealing with the application for judicial review, involving the investigative process and/or deliberations which form part and parcel of the regulatory functions of the agency the courts would be reluctant and/or slow to grant the relief in the form of judicial review. This is due to the reason that the court would be reluctant to open the floodgate and expose these statutory bodies to constant judicial review as to do so would impede these

bodies from exercising their regulatory functions efficiently. The AOB in this case should not be hindered from proceeding with the investigation or deliberations process, which the AOB is entrusted by the law to perform. Therefore, the AOB must be given the leeway to perform the tasks entrusted by the law without any interference;

(vi) In determining whether the "decision" was reviewable, the court would have to examine if the issuance the notice to show cause was part of the AOB's duty to carry out the investigation or inquiry and/or whether there were ongoing proceedings before it. Once there was determination and/or final determination of the issues arising from the inquiry, only at this point the applicants would be at liberty to apply for judicial review to quash the said decision;

(vii) In view of the above the notice to show cause did not qualify as a "decision" within the context of O. 53 r. 2(4) RoC as the said notice did not constitute a conclusive determination of the applicants' rights or obligations and/or deprived the applicants of the benefits they were entitled under Act 498. In the absence of a final determination by the AOB affecting the rights of the applicants could not be said to be adversely affected by the notice to show cause dated 5 September 2014 issued by the SC; and

(viii) Based on the aforesaid the applicants before me were not able to demonstrate a *prima facie* case. That is taken to mean that the applicant had not demonstrated the existence of a *prima facie* case for which further arguments were warranted at the full *inter partes* hearing.

Res Judicata

[22] The applicants were barred from pursuing the issue on the ground that the issue is *res judicata*:

(i) The reliefs sought by the applicants in the first application, second application and the current application before me were almost similar. The proceedings concerned steps and/or processes taken by the, AOB as part and parcel of its investigative process in the performance of its regulatory functions under Act 498. The issues in respect of the first application were identical to the second application, in that, whether the court ought to grant the prayer sought in terms of the judicial review application against the SC in issuance of the letter fixing a meeting when the date of the meeting had passed by the time the leave application was before the court;

(ii) With regard to the case at hand the issue raised was whether the court ought to grant leave for judicial review against the SC's issuance of a notice to show cause requesting for a written explanation from the first applicant, when the first applicant had already given his explanation as sanctioned by, the said notice to show cause dated 5 September 2014;

(iii) It was also observed that the first application, second application and the current application concerned attempts by the applicants to quash the acts undertaken by the AOB as part and parcel of its investigative process. There were no ultimate decisions made affecting the applicants' rights at these stages;

(iv) The applicants had also sought stay of the publication, notification and/or enforcement of the "decisions" which would be the ultimate process of the whole of the investigative process conducted by the AOB under s. 31Z of Act 498. The High Court which decided the first and second applications had ruled that a stay of the proceedings cannot be applied to stay an internal decision making process of the AOB of the SC;

(v) The applicants had appealed to the Court of Appeal against the decisions of the High Court in respect of the first and the second applications and the Court of Appeal had affirmed the decisions of the High Court. The applicants did not pursue their appeal with respect of the first application but had applied for leave to appeal to the Federal Court in respect of part of the decision of the second application. In not pursuing their appeal, except with regard to the refusal of the court to grant a stay of the notification/publication and/or enforcement of the decision made by the AOB, the applicant had conceded that the decision was correct;

(vi) In pursuing the current application there was clearly an abuse of the process of court as the applicants had already sought a stay of the notification/publication and/or enforcement of the decision made by the AOB *vide* the second application and the issue was scheduled to be heard by the Federal Court on 29 January 2015; and

(vii) Therefore, the issues, which were raised by the applicants in the current application, were similar to the issues, which had been ventilated and adjudicated by the court of competent jurisdiction. It is trite that the parties to the action and their privies would be precluded from litigating once more, the *res judicata*. This is in line with the principle that it is in the interest of the public that there must be finality in litigation (see the case of *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783; [1995] 3 MLJ 189).

The Issue Was Academic

[23] The judicial review application was academic:

(i) The High Court which decided the first and second applications had also ruled that the issues before it were academic. Likewise, the current application before me was also academic as by the time the issues were ventilated before me there was nothing to be reviewed. The notice to show cause had required the first applicant to provide an explanation to the AOB pertaining to the matters raised in the said notice to show cause. The first applicant had in fact submitted his explanation on

A 3 October 2014 in response to the notice to show cause. In view of the aforesaid there was nothing further relating to the show cause to be reviewed. Hence, this application would fall on the ground that the relief sought had become academic.

Application Was Premature

B

[24] There is no decision to review:

(i) It was obvious in the case before me and for the reasons that I had highlighted above, the issuance of the notice to show cause by the AOB on 5 September 2014 was the exercise of the powers of the AOB
C pursuant to s. 31Z(5) of Act 498 which stipulates that the AOB shall not proceed to take any action under s. 31Z(2) without first affording the person concerned the opportunity to be heard. As I had discussed above the AOB was merely conducting an inquiry and the issuance of the notice to show cause was part and parcel of its investigative process and
D no decision had been made under s. 31Z(2) of Act 498. The whole process under the relevant section had not been completed. As there was, no decision made by the AOB the applicants' action to move this court for leave for judicial review to be issued was premature. In order to invoke the court's judicial review powers, there must be a subject
E matter for the court to review; a decision made by the decision maker or refusal by him to make a decision (see *Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor* [2008] 6 CLJ 805; [2008] 6 MLJ 704 (CA) p. 718).

[25] Further, the applicants' attempt to restrain the AOB from exercising
F its statutory duties and regulatory functions tantamount to an abuse of the process of court. The applicants were abusing the process of court in attempting to delay advancement of the inquiry and any subsequent deliberations or decisions to be made by the SC. This court must not be privy to the abuse. On this ground, the application ought to be dismissed by this
G court.

Conclusion

[26] Having considered the cause papers filed herein and having heard the arguments by the respective learned counsels from the AGC, the putative respondent and the applicants and having given the matter a very careful and
H serious consideration I am of the view that leave ought not to be granted by this court. Accordingly I dismissed the application for leave for judicial review sought by the applicants *vide* encl. 1 with costs of RM2,000 to be paid to the AGC.

I